

STATE OF CALIFORNIA

MEMO



To: All Licensed Vehicle Manufacturers/Distributors
Public Mailing List

From: New Motor Vehicle Board
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Date: January 2017

Subject: (1) Statutory Notice Re: Factory Ownership of Dealership
(2) Annual Statutory Notice Re: Dealer Development Stores
(3) Assembly Bill 287 - Effective January 1, 2017
(4) Regulation - Effective January 1, 2017
(5) Regulation - Effective April 1, 2017

STATUTORILY REQUIRED NOTICES

Subdivision (o) of Vehicle Code section 11713.3 prohibits factory-owned dealerships within a 10-mile radius of a privately owned dealership of the same line-make (see page 3). There are two limited exceptions to this prohibition: (1) temporary ownership (Veh. Code § 11713.3(o)(2)(A)); and (2) bona fide dealer development program (Veh. Code § 11713.3(o)(2)(B)). The statutorily required notices that are filed with the Board provide as follows:

(1) Statutory Notice Re: Factory Ownership of Dealership

Vehicle Code section 11713.3(o)(3)(A) requires every manufacturer, branch, and distributor that owns or operates a dealership for a temporary period (not to exceed one year at the location of a former dealership of the same line-make that has been out of operation for less than six months) shall give written notice to the Board, within 10 days, each time it commences or terminates operation of a dealership and each time it acquires, changes, or divests itself of an ownership interest.

(2) Annual Statutory Notice Re: Dealer Development Stores

Vehicle Code section 11713.3(o)(3)(B) requires every manufacturer, branch, and distributor that owns an interest in a dealer as part of a bona fide dealer development program as defined shall give written notice to the Board, annually, of the name and location of each

dealer in which it has an ownership interest, the name of the bona fide dealer development owner or owners, and the ownership interests of each owner expressed as a percentage.

Filings Subject to Public Disclosure

The Board maintains all of these filings as public records subject to disclosure under the California Public Records Act (Gov. Code § 6250 et seq.).

LEGISLATION

(3) Assembly Bill 287 (effective January 1, 2017)

The Consumer Automotive Recall Safety Act, sponsored by the California New Car Dealers Association, amended Vehicle Code section 3065 (Assembly Bill 287; Stats. 2016, Ch. 682). For Article 4 protests (cars, motorcycles, and ATVs), franchisors are required to adequately and fairly compensate each of its franchisees for labor and parts used to provide warranty diagnostics, repair, servicing, and all other conditions of the obligation, including costs directly associated with the disposal of hazardous materials that are associated with a recall repair.

REGULATIONS

The Board recently promulgated several regulatory amendments pertaining to case management summarized, in part, as follows (see pages 4-5 for the complete text):

(4) Regulation (Effective January 1, 2017)

13 CCR § 550 - the definitions of Protest and Protestant were amended to reflect a Vehicle Code section 3085 “export or sale-for-resale prohibition policy” protest filed by an association. For purposes of Vehicle Code section 3085, an association (an organization primarily owned by, or comprised of, new motor vehicle dealers and that primarily represents the interests of dealers) is a protestant.

(5) Regulation (Effective April 1, 2017)

13 CCR § 590 - provides that all hearings on protests filed pursuant to Articles 4, 5, and 6 may be considered by the entire Board or may be conducted by an administrative law judge designated by the Board at its discretion. Section 590 was amended to reflect Vehicle Code section 3085 protests.

If you have any questions or comments, please do not hesitate to contact Robin Parker, Senior Staff Counsel, at (916) 323-1536 or rparker@nmvb.ca.gov.

California Vehicle Code Section 11713.3(o)

It is unlawful and a violation of this code for a manufacturer, manufacturer branch, distributor, or distributor branch licensed pursuant to this code to do, directly or indirectly through an affiliate, any of the following:

...

(o) (1) To compete with a dealer in the same line-make operating under an agreement or franchise from a manufacturer or distributor in the relevant market area.

(2) A manufacturer, branch, or distributor, or an entity that controls or is controlled by a manufacturer, branch, or distributor, shall not, however, be deemed to be competing in the following limited circumstances:

(A) Owning or operating a dealership for a temporary period, not to exceed one year at the location of a former dealership of the same line-make that has been out of operation for less than six months. However, after a showing of good cause by a manufacturer, branch, or distributor that it needs additional time to operate a dealership in preparation for sale to a successor independent franchisee, the board may extend the time period.

(B) Owning an interest in a dealer as part of a bona fide dealer development program that satisfies all of the following requirements:

(i) The sole purpose of the program is to make franchises available to persons lacking capital, training, business experience, or other qualities ordinarily required of prospective franchisees and the dealer development candidate is an individual who is unable to acquire the franchise without assistance of the program.

(ii) The dealer development candidate has made a significant investment subject to loss in the franchised business of the dealer.

(iii) The program requires the dealer development candidate to manage the day-to-day operations and business affairs of the dealer and to acquire, within a reasonable time and on reasonable terms and conditions, beneficial ownership and control of a majority interest in the dealer and disassociation of any direct or indirect ownership or control by the manufacturer, branch, or distributor.

(C) Owning a wholly owned subsidiary corporation of a distributor that sells motor vehicles at retail, if, for at least three years prior to January 1, 1973, the subsidiary corporation has been a wholly owned subsidiary of the distributor and engaged in the sale of vehicles at retail.

(3) (A) A manufacturer, branch, and distributor that owns or operates a dealership in the manner described in subparagraph (A) of paragraph (2) shall give written notice to the board, within 10 days, each time it commences or terminates operation of a dealership and each time it acquires, changes, or divests itself of an ownership interest.

(B) A manufacturer, branch, and distributor that owns an interest in a dealer in the manner described in subparagraph (B) of paragraph (2) shall give written notice to the board, annually, of the name and location of each dealer in which it has an ownership interest, the name of the bona fide dealer development owner or owners, and the ownership interests of each owner expressed as a percentage.

...

Title 13 of the California Code of Regulations

§ 550. Definitions.

For the purposes of these regulations:

(a) "Administrative law judge" or "ALJ" means an administrative law judge of the board or Office of Administrative Hearings.

(b) "Affidavit" means a written, ex parte statement made or taken under oath before an officer of the court or a notary public or other person who has been duly authorized to administer oaths.

(c) "Appeal" means an action pursuant to Vehicle Code section 3050(b) filed with the board by an applicant for, or holder of, a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative against the department after any final decision of the department which adversely affects the application for issuance of the occupational license sought, or adversely affects the occupational license held by the appellant.

(d) "Appellant" means an applicant for, or holder of, a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative, who files an appeal with the board pursuant to Vehicle Code section 3050(b).

(e) "Board" means the New Motor Vehicle Board.

(f) "Day" means a calendar day, unless otherwise specified.

(g) "Declaration" means a statement that was made under penalty of perjury and that complies with Code of Civil Procedure section 2015.5.

(h) "Department" means the Department of Motor Vehicles of the State of California.

(i) "Director" means the Director of Motor Vehicles.

(j) "Distributor" means any new motor vehicle distributor or distributor branch required to be licensed pursuant to Article 1 (commencing with section 11700) of Chapter 4 of Division 5 of the Vehicle Code.

(k) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(l) "Electronically stored information" means information that is stored in an electronic medium.

(m) "Executive Director" means the chief executive officer of the board.

(n) "Hearing" includes the taking of evidence or arguments, before an ALJ or before the board itself, during the adjudicative process on the merits of a petition, appeal or protest, or during the adjudication of a motion or an application for an order.

(o) "Manufacturer" means any new motor vehicle manufacturer as defined in Section 672 or manufacturer branch as defined in Section 389 required to be licensed pursuant to Article 1 (commencing with section 11700) of Chapter 4 of Division 5 of the Vehicle Code.

(p) "Motion" or "motions" includes all requests and applications filed with the board seeking action or ruling by the board.

(q) "Papers" means all documents, except exhibits, offered for filing with the board in any proceeding.

(r) "Party" or "Parties" includes the petitioner, protestant, respondent, department, appellant, director, or intervenor.

(s) "Petition" means a written request filed with the board pursuant to Vehicle Code section 3050(c).

(t) "Petitioner" means any person, including a board member, who files a petition seeking consideration by the board pursuant to Vehicle Code section 3050(c) of a matter involving a person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch or representative.

(u) "Proposed stipulated decision and order" is a paper submitted by the parties pursuant to Vehicle Code section 3050.7 seeking to resolve one or more issues in a protest or petition pending before the board.

(v) "Protest" means an action filed with the board by a franchisee pursuant to Vehicle Code sections 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, or 3076. A protest also means an action filed with the board by an association pursuant to Vehicle Code section 3085.

(w) "Protestant" means any licensed new motor vehicle dealer as defined in Vehicle Code section 426 who files a protest with the board. For purposes of Vehicle Code section 3085, an association, which is defined as an organization primarily owned by, or comprised of, new motor vehicle dealers and that primarily represents the interests of dealers, is a protestant.

(x) "Respondent" means any licensed new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch or representative as defined in Vehicle Code sections 426, 672, 389, 296, 297 and 512, respectively, whose conduct, intended conduct, activities or practices are the subject of a protest or petition.

(y) "Serve" or "service" of papers means compliance with one of the methods specified in Article 1, Section 551.24 of these regulations.

(z) "Stipulated decision and order of the board" means a proposed stipulated decision and order that has been adopted by the board pursuant to Vehicle Code section 3050.7.

These definitions are supplemental to and do not replace those found in the Vehicle Code or other applicable statutes and regulations.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 1504, 3050, 3050.7, 3052, 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, 3076, and 3085, Vehicle Code; Sections 2015.5 and 2016.020, Code of Civil Procedure; and Section 472.5, Business and Professions Code.

§ 590. Hearings by Board or by Administrative Law Judge.

All hearings on protests filed pursuant to Sections 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, 3076, or 3085 may be considered by the entire board or may, at its discretion, be conducted by an administrative law judge designated by the board who shall either be a member of the board, an administrative law judge on the staff of the Office of Administrative Hearings, or any person specifically designated by the board.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050(a) and (d), 3060, 3062, 3064, 3065, 3065.1, 3066, 3070, 3072, 3074, 3075, 3076, 3080, 3085 and 3085.2, Vehicle Code.